CALL & JENSEN
A Professional Corporation
William P. Cole, Bar No. 186772
wcole@calljensen.com
Matthew R. Orr, Bar No. 211097
morr@calljensen.com
Joshua G. Simon, Bar No. 264714
jsimon@calljensen.com
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660
Tel: (949) 717-3000
Fax: (949) 717-3100

Attorneys for Defendant Hint, Inc.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LISA KIM MADRIGAL, on behalf of herself and those similarly situated,

Plaintiff,

vs.

HINT, INC., and DOES 1 through 20 inclusive,

Defendants.

Case No. 17-cv-02095-VAP-MRW

AMENDED **JOINT RULE 26(f) REPORT**

Complaint Filed: January 17, 2017
Trial Date: None Set

Counsel for the parties conducted a conference under Rule 26(f) of the Federal Rules of Civil Procedure on April 28, 2017. Joseph Farzam conducted the conference on behalf of Plaintiff Lisa Kim Madrigal and William Cole conducted the conference on behalf of Defendant Hint, Inc. ("HINT").

In accordance with Federal Rule of Civil Procedure 26(f), Local Rule 26-1, and the Court's Order Setting Scheduling Conference, counsel for the Parties jointly submit the following Discovery Plan and Report (amended to include and conform to Exhibit A):

a. Statement of the Case

On behalf of herself and a putative nationwide class, Plaintiff alleges that HINT's flavored water products carry false and misleading representations concerning their ingredients. Specifically, Plaintiff alleges that HINT advertises, labels and represents its flavored water products as being "Natural," "100% Natural," or "All Natural," when in fact the products allegedly contain a synthetic ingredient, propylene glycol. Plaintiff asserts claims for violation of California Business and Professions Code § 17200, *et seq.*, California Business and Professions Code § 17500, *et seq.*, violation of the Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, quasi-contract/unjust enrichment, breach of express warranty, and breach of contract.

HINT denies making any false or misleading representations, or breaching any warranties or contracts, as alleged in the Complaint. HINT further contends that this case is not appropriate for class certification.

b. Legal Issues

Plaintiff contends that the key legal issue in the case is whether Defendant's conduct was unlawful and fraudulent and whether their statements to the public were false, misleading and deceptive within the meaning of the Unfair Competition Law such that Defendant has been unjustly enriched and Plaintiff and the putative class have suffered monetary losses.

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HINT contends that an additional important issue is whether Plaintiff and the putative class members' claims are appropriate for class treatment under Rule 23 of the Federal Rules of Civil Procedure. As noted, HINT contends that Plaintiff cannot satisfy the requirements for class certification under Rule 23 of the Federal Rules of Civil Procedure.

c. Damages

Plaintiff is seeking an order certifying that the action may be maintained as a Class Action, restitution and/or disgorgement of profits to all class members, compensatory damages, statutory damages under California Civil Code § 1780, punitive damages, attorneys' fees and costs, pre- and post-judgment interest, and such other relief as the Court may deem just and proper.

HINT contends that Plaintiff is entitled to no recovery whatsoever. HINT reserves its rights to recover costs and attorneys' fees from Plaintiff to the extent permitted by law.

d. Insurance

As of the time of this filing, HINT is not aware of any insurance coverage for this matter.

e. Non-Dispositive Motions

Plaintiff intends to file a Motion for Class Certification.

HINT intends to file a motion to stay this action pursuant to the primary jurisdiction doctrine, pending resolution of the Food and Drug Administration's proceedings concerning the term "natural."

f. Manual for Complex Litigation

As of the time of this filing, the parties do not believe all or part of the procedures of the Manual for Complex Litigation should be utilized.

g. Status of Discovery

The parties are exchanging initial disclosures.

As noted, HINT contends that this action, including discovery, should be stayed pursuant to the primary judgment doctrine, pending resolution of the FDA's proceedings concerning the term "natural." *See, e.g., Kane v. Chobani*, 645 Fed. Appx. 593 (9th Cir. 2016); *Viggiano v. Johnson & Johnson*, No. CV 14-7250-DMG (MRWx), 2016 WL 5110500 (C.D. Cal. Jun. 21, 2016).

h. Discovery Plan/Schedule

The parties propose bifurcating the discovery into two phases: pre-certification and post-certification.

The Parties anticipate conducting discovery pursuant to the rules and limitations on discovery as set forth in the Federal Rules of Civil Procedure, the Local Civil Rules, and any other orders issued by this Court.

i. Parties' Proposed Schedule

The Parties propose the following schedule:

HINT proposes filing its motion to stay this action on or about May 12, 2017. HINT proposes that the Court not set future dates in this action until after it rules upon the motion to stay. Plaintiff opposes HINT's request.

However, if the Court determines to set future dates before ruling upon the motion to stay, the Parties propose the schedule set forth on Exhibit A.

j. Dispositive Motions

Plaintiff anticipates filing a motion for partial summary judgment on liability.

HINT anticipates filing a motion for judgment on the pleadings. HINT also anticipates filing a motion for summary judgment or partial summary judgment. The proposed motion cut-off date is set forth on Exhibit A.

k. Settlement

With respect to the Court-Directed ADR Program, both Plaintiff and HINT are open to private mediation.

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l. Trial Estimate

The parties believe any trial estimates would be premature until after the Court determines the issue of class certification.

m. Trial Counsel

Plaintiff's trial counsel: Joseph S. Farzam, Matthew R. Evans.

Defendant's trial counsel: William P. Cole, Matthew R. Orr, Joshua G. Simon.

n. Independent Expert or Master

As of the time of this filing, the parties do not believe an Independent Expert or Master will be useful for purposes of litigating this case.

Dated: May 12, 2017

CALL & JENSEN
A Professional Corporation
William P. Cole
Matthew R. Orr
Joshua G. Simon

By: */s/ William P. Cole*
William P. Cole

Attorneys for Defendant Hint, Inc.

JOSEPH FARZAM LAW FIRM
A Professional Corporation
Joseph S. Farzam

By: */s/Joseph S. Farzam*
Joseph S. Farzam

Attorney for Plaintiff Lisa Kim Madrigal

SIGNATURE CERTIFICATION

I hereby certify that the content of this document is acceptable to Joseph S. Farzam, counsel for Plaintiff Lisa Kim Madrigal, and that I have obtained Mr. Farzam's authorization to affix his electronic signature to this document.

Date: May 12, 2017

/s/William P. Cole
William P. Cole

EXHIBIT A: SCHEDULE OF PRETRIAL AND TRIAL DATES

CASE NAME: MADRIGAL v. HINT, INC., et al.

CASE NO.: 2:17-cv-02095-VAP-MRW

Matter	**Plaintiff Request**	**Defendant Request**	**Court's Order**
Trial Date (**Tuesday**) Jury X Court □ Length: _TBD__ Days (dependent on class cert. issue)	Dec. 4, 2018	Dec. 4, 2018	
Pretrial Conf., L.R. 16; Hearing on Motions in Limine	Nov. 12, 2018	Nov. 12, 2018	
Last Day to conduct Settlement Conf., L.R. 16-15	Sept. 28, 2018	Sept. 28, 2018	
Last day for **hearing** non-discovery motions	Oct. 15, 2018	Oct. 15, 2018	
All Discovery Cutoff, including hearing all discovery motions	Aug. 24, 2018	Aug. 24, 2018	
Expert Disclosure (rebuttal)	Feb. 16, 2018 (class cert. issues)	Feb. 16, 2018 (class cert. issues)	
Expert Disclosure (initial)	Jan. 19, 2018 (class cert. issues)	Jan 19, 2018 (class cert. issues)	
Last day to amend pleadings or add parties	July 14, 2017	July 14, 2017	
Last day for filing motion for class certification (if applicable)	March 13, 2018	March 13, 2018	
Hearing on motion for class certification (if applicable)	May 7, 2018	May 7, 2018	

LOCAL RULE 16-15 Settlement Choice:

__ U.S. Magistrate Judge (#1)

__ Attorney Settlement Officer Panel (#2)

X Outside ADR (#3)